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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,582	11/24/2003	Yoji Nishio	020100A	1228
23850	7590	05/10/2004	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006				WEEKS, GLORIA R
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/718,582	NISHIO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria R Weeks	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 26 February 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 9-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 9-12 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/26/04.

- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on February 5, 2001. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Eno (USPN 5,501,394).

In reference to claims 9 and 10, Eno discloses a process for producing a sealed container from a tubular blank of square cross section by folding and sealing a container bottom forming portion of the blank to form a flat bottom, the process being characterized in that the process includes the step of sealing the bottom by collapsing an opening edge part of the container bottom forming portion to a flat form and sealing opposed walls of the collapsed opening edge part as over lapping each other to form a straight bottom seal rib (205; figures 3, 4, 11 and 14; column 4, lines 55-67); the step of sealing a top portion of the container in the form of a gabled roof (165; figure 14) and having inwardly folded gussets (40b, 40d, 190) to form a top seal rib (195), the bottom sealing step and the top sealing step being so practiced that the bottom seal rib (205) and the top seal rib (195) are positioned across each other when seen axially of the blank;

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eno (USPN 5,501,394) in view of Billberg (USPN 4,655,3866) and Mainz et al. (USPN 5,143,281).

Regarding claim 11, Billberg discloses process producing a container formed from a tubular blank of square cross section having a flat bottom (figure 3) and a top seal rib (5) in a gable roof formation (figure 1), but does not disclose the steps of forming the bottom with a bottom seal rib and sealing ears. Mainz et al. teaches a process of forming a container from a blank (figures 4 and 5) wherein the bottom of the container is sealed by creating a bottom seal rib (5; figure 5g) followed by the step of sealing ears by forming the entire container bottom forming portion to a flat form so as to cause a pair of triangular ears (3) to project from a lower end of a container trunk forming portion longitudinally of the bottom seal rib (5) and joining the triangular ears (3) as lapped over the flat part of the container bottom forming portion by sealing (figure 5h'). It would have been obvious to modify the bottom seal step of Billberg to include the flattened bottom seal formed from overlapping triangular ears of Mainz et al. since had been found that both the sealing step of Billberg and Mainz et al. are deemed to be known alternatives to one another, as shown by figures 4 and 5 of Mainz et al.

Although Eno teaches a container with a gable roof top and bottom, it would have been obvious to modify the bottom seal step of Eno to include the flattened bottom seal step of Mainz

et al. based on Billberg's disclosure of a container having a gable roof top and a flattened bottom.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks  
Examiner  
Art Unit 3721

grw  
May 5, 2004

  
SCOTT A. SMITH  
PRIMARY EXAMINER